

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden,

Respondent.

:

Case No. 3:09-cv-471

:

Magistrate Judge Michael R. Merz

:

ORDER DISSOLVING STAY AND ORDER TO SHOW CAUSE

On December 22, 2011, this Court entered, on Respondent's Motion, a stay of its final decision, pending appeal to the Sixth Circuit (Doc. No. 73). On November 9, 2012, in light of the fact that the Second District Court of Appeals had vacated Gillispie's conviction and ordered a new trial and the Ohio Supreme Court had declined to exercise jurisdiction over an appeal from that decision, the Court discharged Gillispie from bond and ordered Respondent "to show cause not later than November 19, 2012, why this Court should not dissolve its stay pending appeal and notify the Sixth Circuit Court of Appeals that the appeal is moot."

In response, the Warden moved to voluntarily dismiss his appeal has moved this Court to vacate its final judgment (Response to Court's Order to Show Cause, Doc. No. 92). The time has not yet expired for Gillispie to respond to the motion to vacate. However, the Sixth Circuit has granted Respondent's Motion to Dismiss. Therefore, the stay pending appeal (Doc. No. 73) is VACATED. Because there would be no utility in this Court's advising the Sixth Circuit of the mootness of a dismissed case, the Order to the Respondent to Show Cause is DISSOLVED.

IT IS SO ORDERED.

November 28, 2012

s/ *Michael R. Merz*
United States Magistrate Judge